

PATENT

App. Ser. No.: 09/749,106

Atty. Dkt. No. ROC920000234US1

PS Ref. No.: IBM2K0234.Y1

REMARKS

This is intended as a full and complete response to the Final Office Action dated December 27, 2005, having a shortened statutory period for response set to expire on March 27, 2006. Applicants submit this response to place the application in condition for allowance or in better form for appeal. Please reconsider the claims pending in the application for reasons discussed below.

Claims 1-31 are pending in the application. Claims 1-31 remain pending following entry of this response. Claims 15 and 22 have been amended to correct minor typographical errors. Applicants submit that the amendments do not introduce new matter.

Claim Rejections - 35 U.S.C. § 103

Claims 1-4 and 6-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Bonomi et al.* (US 6,769,127 B1, hereinafter *Bonomi*) in view of *Pallakoff* (US 6,269,343 B1). Applicants respectfully traverse this rejection.

The Examiner bears the initial burden of establishing a *prima facie* case of obviousness. See MPEP § 2142. To establish a *prima facie* case of obviousness three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Third, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP § 2143. The present rejection fails to establish at least the third criteria, as described below.

With respect to pending claims 1 and 15 and the claims that depend therefrom, each claim describes determining a first price for the purchase order if the program has been purchased by a threshold number of subscribers belonging to the subscriber group and determining a second price, higher than the first price, if the program has not

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been purchased by the threshold number of subscribers belonging to the subscriber group. Examiner states that "*Pallakoff* teaches determining a group discount price that requires a certain number of buyers must have joined the group and purchase the product/service" at Col. 10, Lines 43-56.

Applicants respectfully submit that *Pallakoff* does not describe the stated claim limitation. Instead, *Pallakoff* teaches determining a price based on aggregate demand of buyers of a product (also referred to as "Demand-Based Pricing"). See Col. 1, Lines 53-67. With demand based pricing, prices for goods or services go down as the volume of *units sold* to buyers in any given offer goes up. See *id.* Thus, a seller can "offer volume discounts to buyers acting as a group, even when the buyers may not have any formal relationship with one another." In other words, the price in *Pallakoff* is based on aggregate demand (see Col. 4, Lines 54-55; Col. 3, Lines 53-55), also referred to as a "*Demand Threshold*" (Col. 4, Lines 30-36), and not on a threshold number of subscribers. See *id.* Accordingly, *Pallakoff* does not describe "determining a first price for the purchase order if the program has been purchased by a threshold number of subscribers belonging to the subscriber group and determining a second price, higher than the first price, if the program has not been purchased by the threshold number of subscribers belonging to the subscriber group." Thus, the cited references, alone or in combination do not teach all elements of the claimed invention. Accordingly, withdrawal of the rejection is respectfully requested.

With respect to pending claims 1, 15, and 22, and the claims that depend therefrom, the claims also describe "a subscriber belonging to a subscriber group defined by two or more subscribers, wherein each subscriber belonging to the subscriber group maintains an independent account with the programming provider whereby the subscriber pays the programming provider in order to receive paid for programming, and wherein each subscriber belonging to the subscriber group may elect to purchase or not purchase the program". The Examiner states that *Bonomi* teaches a subscriber group at Figures 7A & 8C and Col. 24, Lines 56-67.

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The cited section (Col. 24, Lines 56-67), describes a screenshot of an administration user screen 840 in Figure 8A. The administration user management area 842 of the administration user screen 840 lists those users who are registered with the system with administrator access. See *id.* As described in *Bonomi*, the administrator may control billing, transaction monitoring, and *customer relations*. See Abstract. Also, an administrator can provide access control to *subscriber accounts by corresponding subscribers* for desired selected services. See Col. 1, Lines 36-50. Thus, *Bonomi* distinguishes between *administrators* and *subscribers*. See *id.* Figure 8C, cited by the examiner, merely depicts administration users (e.g., administrators), and does not depict *subscribers*. Col. 24, Lines 56-67; Figure 8C. Accordingly, the cited section does not describe a "subscriber group" because the cited section refers to *administrators* and does not refer to *subscribers*. Accordingly, *Bonomi* does not teach "a subscriber belonging to a subscriber group defined by two or more subscribers, wherein each subscriber belonging to the subscriber group maintains an independent account with the programming provider whereby the subscriber pays the programming provider in order to receive paid for programming, and wherein each subscriber belonging to the subscriber group may elect to purchase or not purchase the program". Thus, the cited references, alone or in combination do not teach all elements of the claimed invention. Accordingly, withdrawal of the rejection is respectfully requested.

Therefore, the claims are believed to be allowable, and allowance of the claims is respectfully requested.

Allowable Subject Matter

Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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As described above, Applicants believe the base claim from which Claim 5 depends is allowable. Accordingly, Applicant submits that Claim 5 is also allowable and request withdrawal of the objection.

Conclusion

Having addressed all issues set out in the office action, Applicants respectfully submit that the claims are in condition for allowance and respectfully request that the claims be allowed.

If the Examiner believes any issues remain that prevent this application from going to issue, the Examiner is strongly encouraged to contact Gero McClellan, attorney of record, at (336) 643-3065, to discuss strategies for moving prosecution forward toward allowance.

Respectfully submitted, and
S-signed pursuant to 37 CFR 1.4,

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